

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

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U.S. DISTRICT COURT
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BY _____

Mettler-Toledo, Inc.)
1900 Polaris Parkway)
Columbus, Ohio 43240)
Plaintiff,)
v.)
Fairbanks Scales Inc.)
Richard D. Norden, Statutory Agent)
821 Locust Street)
Kansas City, MO 64106)
and)
B-TEK Scales, L.L.C.)
Kraig F. Brechbuhler, Statutory Agent)
1424 Scale Street Sw)
Canton, OH 44706)
Defendants.)

Civil Action No. 9^e06cv97

COMPLAINT AND JURY DEMAND

Plaintiff Mettler-Toledo, Inc. (Mettler Toledo) by and through its attorneys, hereby complains and alleges against Defendants Fairbanks Scales Inc. (Fairbanks) and B-TEK Scales, L.L.C. (B-TEK) as follows:

PARTIES

1. Plaintiff Mettler Toledo is a Delaware corporation having its principal place of business in Columbus, Ohio. Mettler Toledo conducts business and

services truck scales in the Eastern District of Texas out of its office in Beaumont, Texas.

2. Defendant Fairbanks is a Missouri corporation with its principal place of business in Kansas City, Missouri. Fairbanks sells products in Texas and operates several satellite service offices in the Eastern District of Texas including, Beaumont and Texarkana.

3. Defendant B-TEK is an Ohio Limited Liability Company with its principal place of business in Canton, Ohio. B-TEK sells products through a distributor in the Eastern District of Texas in Lufkin, Texas.

JURISDICTION & VENUE

4. This is a claim for patent infringement that arises under the patent laws of the United States, Title 35 of the United States Code. Subject matter jurisdiction is proper under 28 U.S.C. § 1331 and 1338(a). The Court has personal jurisdiction over Defendants at least by virtue of Defendants committing acts of infringement in Texas and in this district.

5. Venue in this district is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) at least by virtue of Defendants committing acts of infringement in Texas and this district.

PATENTS AT ISSUE

6. The allegations of paragraphs 1-5 are incorporated as if fully set forth herein.

7. Mettler Toledo is the assignee and owner of United States Patent No. 4,804,052 entitled "COMPENSATED MULTIPLE LOAD CELL SCALE" (hereinafter "the '052 patent"), United States Patent No. 4,815,547 entitled "LOAD CELL" (hereinafter "the '547 patent") and United States Patent No. 4,955,441 entitled "LOAD CELL MOUNTING FOR ROTATIONAL CONTROL" (hereinafter "the '441 patent") (collectively referred to as "the Mettler Toledo patents").

8. The '052 patent duly and legally issued to Toledo Scale Corporation on February 14, 1989, as assignee of the inventor and who subsequently assigned the '052 patent to Mettler Toledo. A copy of the '052 patent is attached hereto as Exhibit "A".

9. The '547 patent duly and legally issued to Toledo Scale Corporation on March 28, 1989, as assignee of the inventor and who subsequently assigned the '547 patent to Mettler Toledo. A copy of the '547 patent is attached hereto as Exhibit "B".

10. The '441 patent duly and legally issued to Toledo Scale Corporation on September 11, 1990, as assignee of the inventor and who subsequently assigned the '441 patent to Mettler Toledo. A copy of the '441 patent is attached hereto as Exhibit "C".

CLAIM – COUNT I

11. The allegations of paragraphs 1-10 are incorporated as if fully set forth herein.

12. Fairbanks has been and is now infringing the '052 patent and the '441 patent: (1) by making, using, offering to sell, and/or selling within this judicial district, and elsewhere in the United States, products which embody the inventions claimed in the '052 and '441 patents; (2) by actively inducing others to infringe the '052 and '441 patents; and/or (3) by contributing to the infringement of the '052 and '441 patents.

13. Fairbanks' activities with respect to the '052 and '441 patents are without authority or license from Mettler Toledo.

14. Fairbanks has been and will continue making, using, offering to sell, and/or selling products that infringe the '052 and '441 patents without a license from Mettler Toledo.

15. Fairbanks' infringement, contributory infringement, and/or active inducement of infringement of the '052 and '441 patents has been willful and deliberate, and Fairbanks will continue its activities to Mettler Toledo's injury unless enjoined by this Court. As a result of Fairbanks' willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. § 285.

16. As a result of said infringement by Fairbanks, Mettler Toledo has been damaged and will continue to be damaged in an amount to be determined at trial.

17. Mettler Toledo has also suffered and will continue to suffer irreparable injury unless this Court enjoins Fairbanks' activities.

CLAIM – COUNT II

18. The allegations of paragraphs 1-10 are incorporated as if fully set forth herein.

19. B-TEK has been and is now infringing the Mettler Toledo patents: (1) by making, using, offering to sell, and/or selling within this judicial district, and elsewhere in the United States, products which embody the inventions claimed in the Mettler Toledo patents; (2) by actively inducing others to infringe the Mettler Toledo patents; and/or (3) by contributing to the infringement of the Mettler Toledo patents.

20. B-TEK's activities with respect to the Mettler Toledo patents are without authority or license from Mettler Toledo.

21. B-TEK has been and will continue making, using, offering to sell, and/or selling products that infringe the Mettler Toledo patents without a license from Mettler Toledo.

22. B-TEK's infringement, contributory infringement, and/or active inducement of infringement of the Mettler Toledo patents has been willful and deliberate, and B-TEK will continue its activities to Mettler Toledo's injury unless enjoined by this Court. As a result of B-TEK's willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. § 285.

23. As a result of said infringement by B-TEK, Mettler Toledo has been damaged and will continue to be damaged in an amount to be determined at trial.

24. Mettler Toledo has also suffered and will continue to suffer irreparable injury unless this Court enjoins B-TEK's activities.

WHEREFORE, Mettler Toledo respectfully demands judgment against Defendants as follows:

- (a) A ruling that Defendant B-TEK has been and is infringing, contributing to the infringement of, and/or actively inducing infringement of the Mettler Toledo patents;
- (b) A ruling that Defendant Fairbanks has been and is infringing, contributing to the infringement of, and/or actively inducing infringement of the '052 and '441 patents;
- (c) That the infringement, contributory infringement, and/or active inducement of infringement by Defendants has been willful and deliberate;
- (d) That this is an "exceptional case" under 35 U.S.C. § 285;
- (e) That, pursuant to 35 U.S.C. § 283, Defendants, their officers, directors, agents, assigns, and employees, and all others acting in concert or participation with them or under their authority be permanently enjoined from making, using, offering to sell, and selling infringing products and from otherwise infringing, contributing to infringement, and actively inducing infringement of any of the Mettler Toledo patents;
- (e) An accounting of damages to Mettler Toledo arising from Defendants' acts of infringement, contributory infringement, and active inducement of infringement, said damages including lost profits, but in no event less than a reasonable royalty to be paid by Defendants as a result of Defendants' infringing activities;

(f) An award to Mettler Toledo of three times the actual damages and lost profits or royalties so determined by the accounting, together with interest and costs as provided for under 3 U.S.C. § 284;

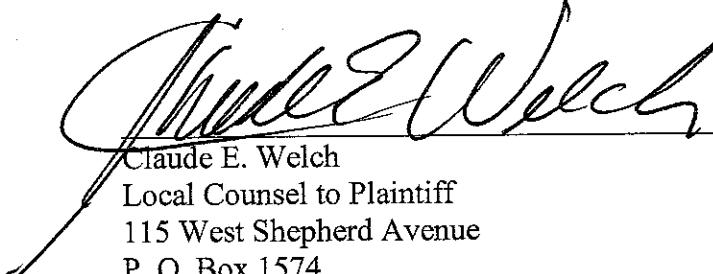
(g) For the costs of this action together with Mettler Toledo's attorneys' fees under 35 U.S.C. § 285; and

h) Such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Mettler Toledo demands a trial by jury of all issues triable by a jury in this case as a matter of right.

Respectfully submitted,



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